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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 18 2003

FILE [redacted] Office: El Paso Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

PUBLIC COPY

IN BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved

The record reflects that the applicant was born in Mexico on September 8, 1976. The applicant's father, [redacted] was born in the United States in August 1942. The applicant's mother, [redacted] was born in Mexico in May 1942 and never had a claim to United States citizenship. The applicant's parents married each other on December 27, 1985. The applicant claims that he acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

In his decision, the acting district director questioned the validity of the applicant's birth certificate, and therefore, the applicant's paternity. The acting district director also determined that the record failed to establish that the applicant's United States citizen parent (Mr. [redacted] had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), in effect at the time of the applicant's birth.

On appeal counsel states that the adjudicating officer erred in failing to inform the applicant of the option of a blood test to establish the relationship between the applicant and his U.S. citizen father. Counsel further asserts that sufficient evidence was provided to substantiate the claim that Mr. [redacted] resided in the U.S. a total of 10 years prior to the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Section 12 of the Act of November 14, 1986, (Pub.L. 99-653, 100 Stat. 3657), shortened the required period of United States residence for the citizen parent, and substituted "five years, at least two" for "ten years, at least five," effective for persons born on or after November 14, 1986. As the applicant was born prior to November 1986, this revision does not apply to him.

The record contains a copy of a birth certificate for the applicant that was registered with the authorities on December 31, 1985, nine years after his birth and four days after his parents' marriage. The acting district director questioned this document because it listed Mr. [redacted] age as 42, when he would have been 34 at the time of the applicant's birth. Counsel points out that Mr. [redacted]

would have been 42 years old at the time of the registration, thus explaining that age on the birth certificate. The AAO notes that the birth certificate does not stipulate that the parent's age was that at the time of the child's birth. Therefore, the explanation that it was the age at time of registration is valid. The AAO also notes that the applicant's mother's age is listed as 42, which was her age at the time of registration. The record indicates that the applicant is the beneficiary of an approved I-130 petition filed on his behalf by Mr. [redacted] in 1992. Though not contained in the record, it is presumed that that petition was approved based on a birth certificate listing Mr. [redacted] as the applicant's father. It is further noted that the applicant's brother, [redacted] was approved for a certificate of citizenship based on a late registration birth certificate registered at the same time as the applicant's and also listing Mr. [redacted] age as 42. These factors considered together, particularly the fact that the Service had already established the relationship between the applicant and Mr. [redacted] by approving the I-130 petition, lead the AAO to conclude that the birth certificate is valid and that Mr. [redacted] is the applicant's father.

The other issue at hand is whether Mr. [redacted] resided in the U.S. for the required period of time. The initial application contained Social Security Administration records for Mr. [redacted] for the years 1960 through 1972. Though not noted at the time of the acting district director's decision, several pages of the records were missing. These pages were located in the applicant's brother's file and are now contained in the applicant's record. These additional pages, covering the years 1966 through 1968, add considerably to the applicant's claim that his father resided in the U.S. for 10 years prior to his birth. The new records increase Mr. [redacted] earnings in 1966 from $2207.14, as initially listed in the acting district director's decision, to $3928.62. For 1967 the earnings went from 0 to $2128.07 and for 1968 his earnings went from $123.36 to $4902.21.

While the Social Security records do not establish the total number of days Mr. [redacted] resided in the U.S. during the period from 1960 through 1972, they do indicate that he had earnings during every quarter from 1960 through 1970. And, while the records also indicate that his earnings were below the median income for Hispanic males for that period, as noted by the acting district director, the earnings were steady and, in general, progressively higher as the years went on. Requiring individuals to meet the median income is inherently unfair as it eliminates all those who form the lower level of the spectrum. Mr. [redacted] income for all years was at least one-third of the median, more often one-half or more. Given the numerous employers and obvious itinerant nature of Mr. [redacted] employment, it is entirely plausible that this income represents year-long employment.

In his decision the acting district director questioned the veracity of an affidavit from [redacted] who stated that Mr. [redacted] rented an apartment from her from 1960 through 1972. The acting district director noted that the information he had at the

time indicated that Mr. [redacted] did not have any earnings for two years covered by the affidavit (1967 and 1972) and minimal earnings for others ($123.36 in 1968). He, therefore, questioned how Mr. [redacted] was able to pay rent without any income. As discussed above, the additional pages of the Social Security records listed income in one of the missing years (1967) and added significant additional income to another (1968). The AAO finds that Ms. [redacted] affidavit corroborates the Social Security records and adds further weight to the claim that Mr. [redacted] resided in the U.S. for the period stated.

In examining all the evidence of residency presented, the AAO has concluded that Mr. [redacted] has established that he resided in the U.S. at least from 1960 through 1970, thereby establishing 10 years' residency in the U.S. prior to the applicant's birth in 1976.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

In the present matter, the applicant has met this burden of establishing the relationship to his father and that his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.